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NO. _____

IN THE
Supreme Court of the United States
OCTOBER TERM. 1980

JAMIEL ALEXANDER CHAGRA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Congressional History:

H.R.Rep.No. 1541, 89th Cong.2d Sess. reprinted in 1966 U.S. Code Cong. Admin. News, pp. 2293, 2298 7

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QUESTION PRESENTED FOR REVIEW

Can a person be convicted of violating the conditions of a bail bond after the bond has been revoked?

JAMIEL ALEXANDER CHAGRA petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

On January 5, 1981, the Court of Appeals entered its panel opinion, not for publication, affirming the conviction

of Petitioner for jumping bail in violation of 18 USC § 3150, with reference to a post-conviction hearing scheduled by the trial court on the Government's motion to increase Petitioner's bail bond from $400,000 to $3,000,000. In advance of the scheduled hearing the Petitioner failed to appear for an appointment at the probation office, and an order was issued by a United States Magistrate revoking Petitioner's bond and raising the bond to $3,000,000. Despite the fact that the bond had been revoked, the Court of Appeals held that the Petitioner could be prosecuted and punished for violating his bond conditions after the bond to which the conditions attached had been revoked. A copy of the panel opinion is reproduced as Appendix A hereof.

On February 2, 1981, the Court of Appeals entered its order denying the Petitioner's application for a rehearing and suggestion for rehearing *en banc*. A copy of this order is reproduced as Appendix B hereof.

Petitioner is presently incarcerated at the Federal Correctional Institution at Ft. Leavenworth, Kansas, pursuant to a judgment and commitment of the United States District Court for the Western District of Texas, El Paso Division, for drug offenses as to which Petitioner was sentenced to two concurrent terms of imprisonment for 15 and 30 years. An appeal from that conviction and judgment is now pending in the United States Court of Appeals for the Fifth Circuit. A copy of the judgment and commitment is reproduced as Appendix C hereof.

Inasmuch as Petitioner was already incarcerated at the time of the order denying rehearing of the appeal in this case, no application for stay of the mandate was made to the Court of Appeals.

JURISDICTION

Jurisdiction was initiated by criminal indictment of a federal grand jury, and jurisdiction of this Honorable Court is invoked under 28 USC § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent provisions of 18 USC § 3150 are as follows:

§ 3150. **Penalties for failure to appear**

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both[.]

STATEMENT OF THE CASE

On December 18, 1979, Defendant was indicted in the El Paso Division of the Western District of Texas for violating 18 USC § 3150 upon the following charge:

That Defendant JAMIEL ALEXANDER

> CHAGRA having been ordered released pending a bond hearing on a $400,000 surety bond pursuant to Chapter 207, Title 18, United States Code, Section 3146, in connection with the charges of offenses under Title 21, United States Code, Sections 963, 841, and 848, did on or about August 23, 1979, wilfully fail to appear before the United States District Court for the El Paso Division of the Western District of Texas, in violation of Title 18, United States Code, Section 3150.

A jury trial was held before the Honorable HARRY LEE HUDSPETH, presiding judge, in El Paso, Texas. At the close of the Government's case-in-chief, Petitioner moved for a judgment of acquittal under Rule 29(a), Federal Rules of Criminal Procedure. The motion was denied, and Petitioner offered in his defense, as a trial exhibit, the earlier order made by the said Judge HUDSPETH, acting as a United States Magistrate, on August 21, 1979, at 3:55 p.m., wherein Judge HUDSPETH revoked the Petitioner's bond and set a new bond. This order is reproduced as Appendix D hereof. The Petitioner moved for a judgment of acquittal under Rule 29(b), Federal Rules of Criminal Procedure, which motion was denied. The jury returned a verdict of guilty. The Petitioner filed a written motion for a judgment of acquittal under Rule 29(c) Federal Rules of Criminal Procedure, which motion was denied.

The Court imposed a sentence of five years to run concurrently with the sentence previously imposed upon Petitioner (Appendix C).

The facts of the case are not in dispute. During the prosecution of Petitioner for the drug offenses, Petitioner was released on bond which obligated the Petitioner to appear at court proceedings when so directed. On August 15, 1979, after a jury trial, the defendant was found guilty on

two of the drug charges against him, and was on the same date orally directed by the Trial Court to appear at a hearing to be conducted on August 23, 1979, upon the Government's request to change the bond and raise it to $3,000,000 cash or corporate surety. Upon the Petitioner's promise so to report, the Trial Court continued the bond on the same terms and conditions until August 23, 1979.

On August 21, 1979, Judge HUDSPETH, acting in his capacity as Magistrate, made an order revoking the Petitioner's bond and reciting that it appeared that Petitioner had violated the conditions of the bond by failing to report to the United States Probation Office as instructed by the Trial Court. Said order set a new bail in the sum of $3,000,000 cash or corporate surety (Appendix D). Petitioner failed to appear on August 23, 1979, for the bail hearing wherein the Government was seeking exactly the same relief theretofore ordered by Judge HUDSPETCH (Appendix D).

At the trial the Petitioner contended that he could not be convicted of violating a condition of an appearance bond as to an event occurring after the bond had been revoked. The argument was renewed before the Court of Appeals, which held that 18 USC §3150 was violated because Petitioner had violated the conditions of his original release by his nonappearance for the scheduled (though mooted) hearing on bail.

REASON FOR GRANTING THE WRIT

The Court of Appeals for the Fifth Circuit has arrived at a decision which is contrary to the authority of the Court of Appeals for the Ninth Circuit, which is contrary to the purpose of the Congress in enacting 18 USC §3150, and

which wrongfully subjects Petitioner to criminal liability for conduct not comprehended by the provisions of 18 USC §1350.

In the case of *United States v. Castaldo,* No. 80-1102, United States Court of Appeals for the Ninth Circuit, decided October 23, 1980, and not yet officially reported, the Court dealt with the same issue raised by this Petition. A copy of the slip opinion of the Court is reproduced as Appendix E hereof.

In *Castaldo* the defendant was released on bail pending appeal. One of the conditions of the bond was that defendant would appear before the district court upon its order at any time during the pendency of the appeal. Thereafter a hearing was convened to revoke the defendant's bond. The defendant appeared at the scheduled time with counsel, but before the commencement of the hearing defendant asked for a continuance to substitute new counsel. The remainder of the hearing was continued to the end of the court's calendar for that day, by which time the defendant had disappeared and could not be located in the court's inquiry. The court thereupon ordered that bail be forfeited and issued a bench warrant for defendant's arrest. Since the defendant was a fugitive, his appeal was dismissed and thereafter the district court ordered a hearing to file and spread the mandate from the court of appeals. Notice of the hearing was served on defendant's attorney of record who had no knowledge of the defendant's whereabouts. At the scheduled hearing the defendant did not appear, nor did his counsel of record, but an associate of counsel appeared and informed the court that the notice of the hearing had arrived after defendant's counsel had left the country. The defendant was indicted for his failure to appear at the hearing for filing and spreading the mandate.

The Ninth Circuit had earlier held in *United States v. McGill,* 604 F.2d 1252 (9th Cir. 1979), *cert. denied,* 444 U.S. 1035, 100 S.Ct. 708, 62 L.Ed.2d 671 (1980), that an essential element of 18 USC §1350 was that the defendant was released pursuant to the Bail Reform Act of 1966 (18 USC §3146). In *Castaldo,* the Court rejected the contention made by the Government that §1350 applied because the defendant had gained his liberty *initially* by release pursuant to the Bail Reform Act. The Court held: (1) §1350 contemplates that one must have been at liberty pursuant to the Bail Reform Act when he failed to appear; (2) §1350 contemplates that the same predicate act shall serve as the basis both for forfeiting bail and for imposing criminal liability if it is to be imposed—that the bail forfeiture and criminal liability are complementary penalties triggered by the same predicate act; and (3) that the Congressional policy of deterring nonappearance (H.R.Rep.No. 1541, 89th Cong.2d Sess. reprinted in 1966 U.S.Code Cong. Admin.News, pp. 2293, 2298) was not furthered by punishing a defendant who was already a fugitive at the time of the hearing. In reversing the defendant's conviction and ordering the dismissal of the indictment, the *Castaldo* Court said:

"... At the time he failed to appear, he was a fugitive. He was no longer released pursuant to the Act."

In the instant case, the Fifth Circuit accepted the Government's contention that a violation of §1350 occurred because the Petitioner had violated the conditions of his *original* release. The Fifth Circuit attempted to distinguish *Castaldo* on the basis that the defendant there was not aware of the scheduled hearing to file and spread the mandate, and that the hearing had been scheduled after that defendant was already a fugitive. This is an unwarranted distinction. The

Ninth Circuit's holding did *not* rest on the circumstance that notice of the hearing was not conveyed to *Castaldo.* The Fifth Circuit Court of Appeals either failed to perceive the rationale of *Castaldo,* or refused to follow that rationale.

The issue is important as a contrariety of interpretation of 18 USC §1350 between the Circuit Courts of Appeal should not exist.

The consequences of this contrariety of opinion are of national impact because of the centrality of bail in federal criminal proceedings, and the necessity of all persons to have due notice of the elements of criminal liability under 18 USC §1350.

CONCLUSION

Review of this case is necessary to remedy the conviction of the Petitioner in the absence of any proof of an element of 18 USC §1350 and to disspel the contrary holdings of the Courts of Appeal.

Respectfully submitted:

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CERTIFICATE OF SERVICE

It is hereby certified that three true and correct copies of the foregoing Petition for Writ of Certiorari were delivered that ____ day of March, 1981, to the United States Solicitor General, United States Department of Justice, Washington, D.C. 20530.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 80-1506
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAMIEL ALEXANDER CHAGRA,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas

(JANUARY 5, 1981)

Before CHARLES CLARK, REAVLEY and WILLIAMS, Circuit Judges.

PER CURIAM:

Jamiel Chagra was convicted of jumping bail in violation of 18 U.S.C. §3150. Chagra now argues that the apparent revocation of his bond by a United States magistrate

dissolved his duty to appear before the court, and vitiates the section 3150 offense. Assuming the bond was revoked, Chagra violated the statute. We affirm his conviction.

In 1979, Chagra was under indictment for narcotics offenses. While these charges were pending, he was released on $400,000 bond. One of the conditions of his release was that he report to his probation officer or to the court whenever he was ordered to do so. Chagra complied with these conditions, including weekly visits to the probation office, for approximately five months.

On August 15, 1979, Chagra was found guilty of violating federal narcotics laws. A hearing was scheduled on August 23, 1979, on the Government's motion to increase bond to $3,000,000. Pending this hearing, Chagra remained free under the $400,000 bond previously set. On August 21, however, Chagra failed to report for a scheduled appointment at the probation office. As a result of his failure to appear for the probation appointment, a United States magistrate issued an order which ostensibly revoked Chagra's $400,000 bond and raised bond to $3,000,000.[1] The bond revocation hearing was held as scheduled on August 23. Chagra failed to attend. He was apprehended some six months later in Las Vegas, Nevada.

Chagra concedes that he could have been charged under section 3150 for failing to appear at the August 23 hearing had his bond not been revoked. In Chagra's view, however, the magistrate's revocation of the bond made section 3150 inapplicable. He argues that he cannot be punished for violating his bond conditions after the bond to which the conditions attached had been revoked.

---

[1]The Government argues that a United States magistrate has no authority to revoke bond, and that, as a result, the magistrate's order could not absolve Chagra of his duty to appear in court. Resolution of this asrgument is not material to our disposition of the case.

Assuming he knew of the magistrate's order, Chagra may have believed the August 23 bond hearing was meaningless since the magistrate's order would have resolved the only issue to be considered at the August 23 bond hearing, the raising of Chagra's bond from $400,000 to $3,000,000. Nevertheless, Chagra cannot prevail. The statute specifically provides that the section 3150 offense is consummated when two conditions are met: (1) when the defendant has been released on bond, and (2) when the defendant fails to appear as ordered.[2] All parties agree that Chagra was released on bond and that he failed to appear for the bond hearing. Chagra's subjective belief as to the utility of a hearing cannot relieve him of the obligation to attend as ordered.

Chagra directs our attention to United States v. Castaldo, No. 80-1102 (9th Cir. Oct. 23, 1980). This decision does not change our view of Chagra's case. In *Castaldo,* the Ninth Circuit held that the section 3150 offense did not apply to a defendant who already was a fugitive at the time of his failure to appear at a scheduled hearing. The crucial distinction between *Castaldo* and this case, however, is that Castaldo was a fugitive, not only at the time the hearing was held, but also at the time the hearing originally was scheduled. *Id.*, slip op. at 629. Because Castaldo did not know of the scheduled hearing, section 3150 could not serve the "deterrent of nonappearance" purpose identified by the Ninth Circuit. By contrast, Chagra was fully aware of the

---

[2]The relevant language of section 3150 is as follows:

> Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, [incur a forfeiture of bond or be subject to imprisonment].

scheduled August 23 hearing, and failed to appear in full knowledge that he was disobeying that he was disobeying the conditions of his original release. Section 3150 was designed to deter this kind of nonappearance, and we hold that Chagra's conviction is proper.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 80-1506

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAMIEL ALEXANDER CHAGRA,
Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Texas

**ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC**

(Opinion January 5, 1981, 5 Cir., 198 , ____ F.2d ____).

(February 2, 1981)

Before CHARLES CLARK, REAVLEY and
WILLIAMS, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on

the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Petition for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

_____
United States Circuit Judge

Form 704-2

CLERK'S NOTE:
SEE RULE 41 FRAP AND LOCAL RULE 17 FOR STAY OF THE MANDATE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	NO. EP-79-CR-91
	)	
JAMIEL ALEXANDER CHAGRA	)	

JUDGMENT AND COMMITMENT

On June 1, 1979, the Defendant, JAMIEL A. CHAGRA, as well as his counsel, Oscar Goodman and Joseph Chagra, and counsel for the Government appeared before the Court. At that time the Defendant entered a plea of not guilty to the charges in the superseding indictment filed May 21, 1979. On August 15, 1979, the jury returned a verdict of guilty as to Counts 3 and 4 of the indictment submitted to them during their deliberation. Said indictment was the same indictment returned by the Grand Jury on May 21, 1979 except that, for the jury's convenience, Counts 5 and 6 of the May 21, 1979 indictment had been renumbered as Counts 3 and 4, respectively.

Defendant has been convicted as charged of the offenses of aiding and abetting the possession with intent to distribute a quantity of cocaine, a Schedule II Narcotic Drug Controlled Substance, in violation of Title 18, U.S.C. § 2; and of possessing and conspiring to possess, marijuana and cocaine, with intent to distribute, in violation of title 21,

Sections 841, 846, 952 and 963, which violations were a continuing series of violations of the Controlled Substances Act, Title 21, U.S.C. §801, *et seq.*, undertaken by Defendant in concert with at least five other persons with respect to whom Defendant occupied a position of organizer, a supervisory position, and any other position of management, and from which such continuing series of violations Defendant obtained substantial income and resources, all in violation of Title 21, U.S.C. §848.

The Court asked whether Defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the Defendant guilty as charged and convicted and ORDERED that:

The Defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN YEARS on Count 3 with a Special Parole Term for life under Title 21, U.S.C. §841(b)(1)(a) and FINED $25,000.00; THIRTY YEARS on Count 4 and FINED $100,000.00 with the sentence on Count 4 to run concurrently with the sentence on Count 3.

SIGNED AND ENTERED at 10:45 p.m., on this 8th day of April, 1980.

/s/ William S. Sessions

WILLIAM S. SESSIONS
CHIEF JUDGE
United States District Court

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	)	
	)	
- vs-	)	EP-79-CR-91
	)	
JAMIEL ALEXANDER CHAGRA	)	
a/k/a JIM ALEXANDER	)	

ORDER REVOKING BOND AND SETTING NEW BOND

On this day came on to be considered the above-styled and numbered cause. It appearing to the Court that the above Defendant has violated the conditions of his bond by failing to report to the United States Probation Office in Las Vegas, Nevada, as instructed by the District Court, the following order should be entered:

It is hereby ORDERED that the bond of Defendant JAMIEL ALEXANDR CHAGRA, also known as JIM ALEXANDER, be, and it is hereby REVOKED.

It is further ORDERED that bond as to said Defendant be, and it is hereby, set in the new amount of Three Million Dollars ($3,000,000) cash or corporate surety.

SIGNED AND ENTERED at 3:55 p.m., on this 21st day of August, 1979.

/s/ Harry Lee Hudspeth

HARRY LEE HUDSPETH
UNITED STATES
MAGISTRATE

A true copy of the original, I certify.
Clerk, U. S. District Court
By: /s/ Sylvia Rodriguez

Deputy

APPENDIX E

UNITED STATES v. CASTALDO

UNITED STATES of America,
Plaintiff-Appellee,

v.

Ernest Joseph CASTALDO,
Defendant-Appellant.
No. 80-1102.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Sept. 16, 1980.

Decided Oct. 23, 1980.

Defendant was convicted in the United States District Court for the Central District of California, Harry Pregerson, J., of bail jumping, and he appealed. The Court of Appeals, Skopil, Circuit Judge, held that defendant, who had been released on bail, whose bail had been forfeited, and for whom bench warrant had been issued, was not "released pursuant to Bail Reform Act of 1966" but was fugitive, and thus defendant could not be convicted under the Act for bail jumping.

Reversed and dismissal of indictment ordered.